

IN THE MATTER OF THE PETITION FOR HABEAS CORPUS OF LAURENTE C. ILAGAN, ANTONIO B. ARELLANO, AND MARCOS D. RISONAR, JR., INTEGRATED BAR OF THE PHILIPPINES

G.R. No. 70748. October 21, 1985

Ponente: MELENCIO-HERRERA, J.

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MELENCIO-HERRERA, J.:

This is a petition for Habeas Corpus filed by the Integrated Bar of the Philippines (IBP), the Free Legal Assistance Group (FLAG); and the Movement of Attorneys for Brotherhood, Integrity and Nationalism (MABINI) on behalf of Attorneys Laurente C. Ilagan, Antonio B. Arellano, and Marcos Risonar, Jr.

The facts follow:

On May 10, 1985, Attorney Laurente C. Ilagan was arrested in Davao City by elements of the PC-INP and detained at Camp Catitipan on the basis of a Mission Order allegedly issued by the Ministry of National Defense. On that same day, fifteen lawyers from the IBP Davao Chapter visited Atty. Ilagan. One of the visiting lawyers, Atty. Antonio Arellano, was also arrested and detained on the basis of an unsigned Mission Order. On May 13, 1985, the military sent word to the IBP Davao Chapter that Attorney Marcos Risonar would likewise be arrested. The latter went to Camp Catitipan to verify his arrest papers and was detained on the basis of a Mission Order signed by General Echavarria, Regional Unified Commander.

This petition for habeas corpus was then filed by and on behalf of the three arrested lawyers hereinafter referred to as the detained attorneys on the ground that their arrests were illegal and violative of the Constitution, since arrests cannot be made on the basis of Mission Orders, and that there appears to be a military campaign to harass lawyers involved in national security cases.

On May 16, 1985, the Court issued the Writ, required a Return, and set the petition for hearing on May 23, 1985.

In their Return, respondents contended that the detained attorneys were arrested on the basis of a PDA issued by the President on January 25, 1985; that the Writ of habeas corpus is suspended as to them by virtue of Proclamation No. 2045-A; and that pursuant to the ruling in *Garcia-Padilla vs. Ponce Enrile, et al.*[1], Courts lack the authority to inquire into the cause and validity of detention of persons held pursuant to the suspension. Respondents further expounded on the state of rebellion in Davao City on the basis of seized subversive documents, implying that the detained attorneys played active roles in organizing mass actions of the Communist Party of the Philippines and the National Democratic Front. Respondents then prayed for the denial of the petition.

During the hearing on May 23, 1985, the detained attorneys narrated to the Court the circumstances of their arrest and detention. Counsel for the respondents, on the other hand, presented evidence of subversive activities in Davao, but due to lack of evidence linking the detained attorneys with the alleged subversive activities, the Court, on the same day, resolved to order the temporary release of the detained attorneys on the recognizance of the

principal counsel of petitioners, namely, retired Chief Justice Roberto Concepcion and retired Associate Justice J.B.L. Reyes. The Court further resolved to give petitioners ten days within which to file a traverse to the Return of the Writ and the respondents ten days to file a Reply thereto.

The next day, or on May 24, 1985, petitioners filed a Manifestation and Motion stating that the detained attorneys had not yet been released and praying that they be released to the custody of the principal counsel of petitioners at the Supreme Court.

On May 27, 1985, respondents filed an Urgent Motion for Reconsideration of this Court's Order of Release reiterating that the suspension of the Writ of Habeas Corpus has the effect of ousting the Court of its jurisdiction to hear the case, and attached thereto classified documents consisting of the Report of respondent Brig. Gen. Tan-Gatue stating that the detained attorneys "were arrested not on the basis of their 'lawyering' but for specific acts of rebellion and economic sabotage as well as for their leadership in the CPP" x x x" even to the extent of attending CPP and NPA rites and using their profession as lawyers as cover-up for their activities in furtherance of CPP goals and objectives;" and that the detained attorneys were involved in the Welgang Bayan in Davao City, a mass action "with demands for the armed overthrow of the government." Sworn statements of several persons also implicated the detained attorneys in alleged subversive activities. Respondents added that, while there is a Court Order directing release, they, too, are under orders, pursuant to the PDA, to hold in custody the detained attorneys until ordered released by the President or by his duly authorized representative, and that the PDA, when issued, constitutes authority to preventively detain them for a period not exceeding one year.

On May 28, 1985, respondents filed an Urgent Manifestation/Motion stating that an Information for Rebellion was filed on May 27, 1985 against the detained attorneys before the Regional Trial Court of Davao City, Branch X, docketed as Criminal Case No. 12,349; that a Warrant of Arrest had been issued against them; and praying that this Petition be dismissed for having been rendered moot and academic.

On May 30, 1985, petitioners filed an Opposition to respondents' Urgent Motion/Manifestation contending that since the detained attorneys were not given the benefit of preliminary investigation, they were denied their constitutional right to due process; consequently, the Information for Rebellion filed against them is void. Respondents, on the other hand, filed on the same day a Comment to petitioners' Manifestation and Motion reiterating their prayer for the dismissal of the petition on the ground of mootness by virtue of the proceedings before the Regional Trial Court of Davao.

On June 3, 1985, petitioners filed a Consolidated Comment and Traverse contending that the "Welgang Bayans" were in legitimate exercise of the constitutional right of expression and assembly to petition the government for redress of grievances; that the detained attorneys' participation was limited to serving in the legal panel and the negotiating panels; that Proclamation No. 2045 is unconstitutional because there exists no factual or legal basis for the suspension of the Writ of Habeas Corpus as provided for in the Constitution; that the evidence presented by respondents against the detained attorneys are of a doubtful and flimsy nature; and that the PDA is unconstitutional because it violates Section 3, Article IV, of the Constitution prohibiting unreasonable searches and seizures.

On July 1, 1985, petitioners filed a Manifestation and Motion praying that the Court immediately resolve the issues raised as the case affects not only the detained attorneys but the entire legal profession and the administration of justice as well.

Finally, after two extensions granted by the Court, on July 8, 1985, respondents filed a Consolidated Reply, reiterating first, the validity of Proclamation No. 2045, as amended by Proclamation No. 2045-A and of the PDA issued against petitioners as an incident to the suspension of the privilege of the Writ of Habeas Corpus; secondly,

the ruling in *Garcia-Padilla vs. Ponce Enrile, et al.*[2]; and thirdly, its prayer for the dismissal of the petition on the ground of mootness by virtue of the filing of an Information for Rebellion against the detained attorneys before the Regional Trial Court of Davao City.

As contended by respondents, the petition herein has been rendered moot and academic by virtue of the filing of an Information against them for Rebellion, a capital offense, before the Regional Trial Court of Davao City and the issuance of a Warrant of Arrest against them.[3] The function of the special proceeding of Habeas Corpus is to inquire into the legality of one's detention. Now that the detained attorneys' incarceration is by virtue of a judicial order in relation to criminal cases subsequently filed against them before the Regional Trial Court of Davao City, the remedy of Habeas Corpus no longer lies. The Writ had served its purpose.[4]

"SEC. 4. When writ not allowed or discharge authorized. — If it appears that the person alleged to be restrained of his liberty is in the custody of an officer under process issued by a court or judge or by virtue of a judgment or order of a court of record, and that the court or judge had jurisdiction to issue the process, render the judgment, or make the order, the writ shall not be allowed; or if the jurisdiction appears after the writ is allowed, the person shall not be discharged by reason of any informality or defect in the process, judgment or order. Nor shall anything in this rule be held to authorize to discharge of a person charged with or convicted of an offense in the Philippines, or of a person suffering imprisonment under lawful judgment." (Rule 102)

If the detained attorneys question their detention because of improper arrest, or that no preliminary investigation has been conducted, the remedy is not a petition for a Writ of Habeas Corpus but a Motion before the trial court to quash the Warrant of Arrest, and/or the Information on grounds provided by the Rules, or to ask for an investigation/reinvestigation of the case.[5] Habeas Corpus would not lie after the Warrant of commitment was issued by the Court on the basis of the Information filed against the accused.[6] So is it explicitly provided for by Section 14, Rule 102 of the Rules of Court, reading:

"SEC. 14. When person lawfully imprisoned recommitted, and when let to bail. — If it appears that the prisoner was lawfully committed, and is plainly and specifically charged in the warrant of commitment with an offense punishable by death, he shall not be released, discharged, or bailed. If he is lawfully imprisoned or restrained on a charge of having committed an offense not so punishable, he may be recommitted to imprisonment or admitted to bail in the discretion of the court or judge. x x x "

But petitioners submit that because of the absence of a preliminary investigation, the Information for Rebellion filed against the detained attorneys is void and the Court below could not have acquired jurisdiction over them, and consequently, they are entitled to release.

On the other hand, respondents contend that a preliminary investigation was unnecessary since the detained attorneys were lawfully arrested without a warrant.

Pursuant to the 1985 Rules on Criminal Procedure, no Information for an offense cognizable by the Regional Trial Court shall be filed without a preliminary investigation having been first conducted, except as provided for in Section 7 of Rule 112.[7] The Information filed by the City Fiscal before the Regional Trial Court of the City of Davao fell within the exception. Thus, the Verification reads:

"VERIFICATION

I HEREBY CERTIFY that I am filing this Information in pursuance with Rule 112, Section 7 of the 1985 Rules on Criminal Procedure, wherein after examining the affidavits of the government witnesses and other documents attached to the records, I found sufficient ground to hold respondents for trial.

(SGD.) EMMANUEL E. GALICIA
City Fiscal"

Section 7, Rule 112, of the 1985 Rules on Criminal Procedure above referred to provides:

"SEC. 7. When accused lawfully arrested without warrant. — When a person is lawfully arrested without a warrant for an offense cognizable by the Regional Trial Court the complaint or information may be filed by the offended party, peace officer or fiscal without preliminary investigation having been first conducted, on the basis of the affidavit of the offended party or arrested officer or person.

"However, before the filing of such complaint or information, the person arrested may ask for a preliminary investigation by a proper officer in accordance with this Rule, but he must sign a waiver of the provisions of Article 125 of the Revised Penal Code, as amended, with the assistance of a lawyer and in case of non-availability of a lawyer, a responsible person of his choice. Notwithstanding such waiver, he may apply for bail as provided in the corresponding rule and the investigation must be terminated within fifteen (15) days from its inception.

"If the case has been filed in court without a preliminary investigation having been first conducted, the accused may within five (5) days from the time he learns of the filing of the information, ask for a preliminary investigation with the same right to adduce evidence in his favor in the manner prescribed in this Rule."

Section 5, Rule 113 of the same Rules enumerates the instances when an arrest without warrant is lawful.

"SEC. 5. Arrest without warrant; when lawful. — A peace officer or a private person may, without a warrant, arrest a person:

"(a) When, in his presence, the person to be arrested has committed, is actually committing, or is attempting to commit an offense;

"(b) When an offense has in fact just been committed, and he has personal knowledge of facts indicating that the person to be arrested has committed it; and

"(c) When the person to be arrested is a prisoner who has escaped from a penal establishment or place where he is serving final judgment or temporarily confined while his case is pending, or has escaped while being transferred from one confinement to another.

"In cases falling under paragraphs [a] and [b] hereof, the person arrested without a warrant shall be forthwith delivered to the nearest police station or jail, and he shall be proceeded against in accordance with Rule 112, Section 7. (Rule 113)

Paragraphs (a) and (b) refer to cases when a suspect is caught in flagrante delicto or immediately thereafter, while paragraph (c) refers to escaping prisoners. As to whether the detained attorneys fall under either of the first two instances enumerated is a question of fact, which will need the presentation of evidence and is more properly within the province of the trial Court.

The question of absence of a proper preliminary investigation is also better inquired into by the Court below. When so raised, this Court, speaking through Mr. Justice Claudio Teehankee, has held that the trial Court is called upon "not to dismiss the information but hold the case in abeyance and conduct its own investigation or require the fiscal to hold a reinvestigation.[8] As stressed in *People vs. Casiano*, 1 SCRA 478[1961], this is the proper procedure since the "absence of such investigation did not impair the validity of the Information or otherwise render it defective. Much less did it affect the jurisdiction of the Court of First Instance".[9] The right to a preliminary investigation, being waivable, does not argue against the validity of the proceedings, the most that could have been done being to remand the case in order that such investigation could be conducted.[10]

"x x x the proper forum before which absence of preliminary investigation should be ventilated is the court of First Instance, not this Court. Reason is not wanting for this view. Absence of preliminary investigation does

not go to the jurisdiction of the court but merely to the regularity of the proceedings. It could even be waived. Indeed, it is frequently waived. These are matters to be inquired into by the trial court, not an appellate Court." [11]

The Nolasco case, which petitioners invoke [12], wherein this Court ordered the release of two of the accused, is not on all fours with the case at bar as, in the case, the accused were charged only with Illegal Possession of Subversive documents under Presidential Decree No. 33, which is punishable by prision correccional in its minimum period, and the trial Court had granted bail; whereas in this case, petitioners are charged with the capital offense of Rebellion, and the trial Court has not allowed bail.

WHEREFORE, this petition for Habeas Corpus is hereby dismissed for having become moot and academic. Petitioners are now detained by virtue of a Warrant of Arrest issued by the Regional Trial Court of Davao City in relation to the criminal case for Rebellion filed against them before said Court.

SO ORDERED.

Makasiar, C.J., Plana, Escolin, Relova, Gutierrez, Jr., De la Fuente, Cuevas, and Alampay, JJ., concur.

Teehankee, Concepcion, Jr., and Abad Santos, JJ., see dissenting opinion.

Patajo, J., joins J. Concepcion, Jr. in his dissenting opinion.

Aquino, J., in the result.

[1] 121 SCRA 472 [1983].

[2] Ibid.

[3] In the Matter of the Petition for Habeas Corpus of Joseph Olayer, et als. vs. Gen. Fabian C. Ver, G. R. No. L-59787, May 3, 1985; In the Matter of the Petition of Habeas Corpus in behalf of Pedro Sison, Jr. vs. Ministry of National Defense, G. R. No. 56893, May 3, 1985; Parong vs. Minister Juan Ponce Enrile, G. R. No. 61388, July 19, 1985.

[4] In the Matter of the Petition for Habeas Corpus in behalf of Anderson Beltran, et als. vs. Garcia, 89 SCRA 717 [1979].

[5] In the Matter of the Application for a Writ of Habeas Corpus, Simon Luna vs. Hon. Lorenzo Plaza, etc., et al., 26 SCRA 310, 323 [1968].

[6] Medina vs. Orozco, Jr., 18 SCRA 1168 [1966].

[7] Section 3, Rule 112.

[8] People vs. Abejuela and People vs. Vidal Endan, 38 SCRA 324 [1971].

[9] People vs. Abejuela, supra; Zacarias vs. Hon. Fernando Cruz, 30 SCRA 728 [1969].

[10] People vs. Manlapas, 5 SCRA 883 [1966].

[11] Medina vs. Orozco, Jr., et al., 18 SCRA 1168, 1171 [1966].

[12] G. R. No. 68347, December 19, 1984.

DISSENTING OPINION

ABAD SANTOS, J.:

It was Holmes who said that the life of the law has not been logic; it has been experience. Thus the early Roman law was ritualistic and highly formal. Gradually, however, it evolved and form was replaced by substance. The development of the law did not stop there. The Roman praetorian law enlarged, supplemented and over-rode law which became narrow and rigid in scope. Finally common law produced equity jurisprudence. It is a formal set of legal and procedural rules and doctrines to aid and even override common and statute law in order to protect rights and enforce duties fixed by substantive law.

The majority opinion appeals to the mind for it appears to be logically constructed. It leans heavily on the letter of the law. Upon the other hand the dissenting opinion of Justice Teehankee which is his article of faith appeals both to the mind and the heart for it is based not only on law but on equity also.

I believe that Justice Teehankee's opinion better serves the ends of justice and I gladly subscribe to it. I also subscribe to Justice Concepcion's separate opinion.

SEPARATE OPINION

CONCEPCION, Jr., J.:

1. I dissent. The petition is not moot and academic.
2. Petitioners should be set free immediately because they were arrested unlawfully, and the information filed against them dismissed for being null and void. However, the authorities may, if they choose to do so, file a case against petitioners in the Fiscal's Office of Davao. The fiscal should conduct a preliminary investigation as required by law. If he finds the existence of a prima facie case, then he should file the necessary information in court. After the court issues a warrant of arrest against petitioners, only then may they be placed in custody.
3. Petitioners have a right to a preliminary investigation, and infringement of this right is a denial of due process.
4. The instances when a person may be arrested without a warrant are clearly laid down by Rule 113 of the 1985 Rules on Criminal Procedure as follows:

"SEC. 5. Arrest without warrant; when lawful.— A peace officer or a private person may, without a warrant, arrest a person:

“(a) When, in his presence, the person to be arrested has committed, is actually committing, or is attempting to commit an offense;

“(b) When an offense has in fact just been committed, and he has personal knowledge of facts indicating that the person to be arrested has committed it; and

“(c) When the person to be arrested is a prisoner who has escaped from a penal establishment or place where he is serving final judgment or temporarily confined while his case is pending, or has escaped while being transferred from one confinement to another.

"In cases falling under paragraphs (a) and (b) hereof, the person arrested without a warrant shall be forthwith delivered to the nearest police station or jail, and he shall be proceeded against in accordance with Rule 112, Section 7. (6a, 17a)."

5. From the facts brought out by the pleadings and at the hearing, petitioners' arrest does not fall under any of the

instances enumerated above. Their arrest without a warrant is therefore patently and undeniably illegal and contrary to law.

6. Just as a spring polluted at its source cannot produce a flow of clean water, the unlawful arrest of petitioners cannot give rise to a valid information. The information filed in court against them necessarily is and must remain null and void.

7. In Morales,[1] this Court cautioned against arrests without warrant in this wise:

"14. Care should be exercised in making an arrest without a warrant. Where there is no justification for the arrest, the public officer could be criminally liable for arbitrary detention or unlawful arrest or for some other offense."

8. It is the responsibility of the judiciary to define and maintain the delicate balance between individual freedom and the security of the State. In the fulfillment of this mission, the active participation and assistance of dedicated human rights lawyers are indispensable. They sacrifice time and effort, and take grave risks to defend the rights of their clients. I salute them and say, "May their tribe increase."

9. At a time when the Armed Forces of the Philippines has to play a salient role in our affairs of government in view of the existence of a rebellion in our midst, there is all the more a greater need for lawyers to defend the rights of individuals against actual or possible abuses of agents of the State.

10. We must strengthen and solidify the Rule of Law. It is the only way to the survival of democracy in our land.

[1] G.R. No. 61016, Horacio R. Morales, Jr., vs. Minister Juan Ponce Enrile, Gen. Fabian C. Ver and Col. Galileo Kintanar; and G.R. No. 61107, Antonio C. Moncupa, Jr., vs. Minister Juan Ponce Enrile, Gen. Fabian C. Ver and Col., Galileo Kintanar, promulgated April 26, 1983.

ADDITIONAL OPINION

MELENCIO-HERRERA, J.:

I wish to express my views on other aspects of this case with which the majority does not concur.

It is to be noted that in the Warrant of Arrest issued by the Executive Judge of the Regional Trial Court of Davao City "no bail" has been indicated. Neither was bail recommended by the City Fiscal. However, pursuant to Presidential Decree No. 1834, even as amended by Presidential Decree No. 1974 (May 2, 1985), the crime of Rebellion is still punishable by "reclusion perpetua to death." Presidential Decree No. 1974 did not reduce the penalty for Rebellion under Article 135 of the Revised Penal Code, as amended by Presidential Decree No. 1834, but merely "tempered" the penalties for "conspiracy or proposal or inciting to commit such crimes," limiting the amended provisions to Articles 136, 138, 141, 142, 142-B, 143, 144, 146, and 147, but not to Article 135 of the Revised Penal Code.

Considering, therefore, that the detained attorneys are not entitled to bail as a matter of right before the prosecution is heard on its evidence, and observing fealty to the Constitutional mandate that "all persons, except those charged with capital offenses when evidence of guilt is strong shall before conviction, be bailable by sufficient sureties" (Section 18, Article IV, 1973 Constitution), the Regional Trial Court of Davao City, Branch X, should be directed in Criminal Case No. 12,349, to determine whether the evidence of guilt against the detained attorneys is strong, and considering the gravity of the offense charged, it should likewise be required to hear the

case to completion with deliberate speed so that their guilt or innocence may be determined without delay.

Furthermore, pending resolution by this Court of the crucial issues raised in *Garcia-Padilla* and in *Integrated Bar of the Philippines, et al. vs. Min. Juan Ponce Enrile, et al.* (G. R. No. 66610) consolidated with *National Bar Association of the Philippines, et al. vs. Min. Juan Ponce Enrile, et al.* (G. R. No. 66706), it is my view that individuals against whom PDAs have been issued should be furnished with the original, or the duplicate original, or a certified true copy issued by the official having official custody of the PDA, at the time of apprehension. Pursuant to the Rules and Regulations Implementing Presidential Decree No. 1877, as amended by Presidential Decree No. 1877-A, the PDAs should also be enforced within 24 hours in the Metro Manila area or within 48 hours outside Metro Manila, upon receipt by the unit concerned. In this case, although the record does not show such date of receipt, the fact is that the PDA was issued on January 25, 1985 but the detained attorneys were arrested only on May 10 and 13, 1985, respectively. The four-month gap can give room for doubt as to its authenticity and whether, in fact, the detained attorneys posed "any appreciable danger to national security and public order."

The paramount consideration should be that the Constitutional "right of the people to be secure in their persons x x x against unreasonable searches and seizures of whatever nature and for any purpose shall not be violated" (Section 3, Article IV, 1973 Constitution). Until the issue of the validity of the PDA is finally resolved, PDAs applied for on the basis of militancy alone in national security cases, of insufficient surveillance, or unsupported deductions and inferences, contravene the Constitutional mandate that "no warrant of arrest shall issue except upon probable cause to be determined by the Judge, or such other responsible officer as may be authorized by law, after examination under oath or affirmation of the complainant and the witnesses he may produce" (*ibid.*). Adherence to Constitutional mandates could ease the current discontent and growing insurgency gripping the nation today. The objective should be to fight for the hearts and minds of the people by observing the rule of law.

Lastly, I venture to invite attention, particularized for this case, that the Constitution provides for the vesting of judicial power not only in this Court but also in inferior Courts established by law. While this Court can reverse and modify, on appeal or certiorari, actuaciones of inferior Courts, the latter, as wielders of judicial power, can not only invoke, but also be entitled to, "procedural due process". Without a hearing, howsoever formal, the involved Regional Trial Court branch in Davao City should not be deprived of jurisdiction, substantial or even initial, over persons it has ordered, or confirmed as, arrested.

DISSENTING OPINION

TEEHANKEE, J.:

More than four (4) agonizing months[*] after this Court issued its near-unanimous Resolution[1] of May 23, 1985, after hearing the parties in oral argument in the morning, ordering the immediate release of the three petitioners-detainees, Attys. Laurente C. Ilagan, Antonio B. Arellano and Marcos D. Risonar, Jr., on the recognizance of their principal counsel, retired Chief Justice Roberto Concepcion, Chairman, Integrated Bar of the Philippines national legal aid committee, and retired Justice Jose B. L. Reyes, President Emeritus of the Integrated Bar of the Philippines, as well as the president and officers of their own IBP Davao chapter, which release it had expressly ordered to be "immediately executory", this Court has now refused to enforce its own release order. Repeated motions for enforcement of this Court's "immediately executory" order of release as against respondents' "brazen disrespect and contemptuous disregard"[2] thereof were filed in vain. It has instead dismissed the petition for habeas corpus for having become "moot and academic," because of the arbitrary filing of precipitate, vindictive and oppressive charges against them for the capital crime of rebellion without hearing or

preliminary investigation and in gross violation of their constitutional right and rudimentary requirements of due process and fair play.

I. Antecedent Facts. — The three lawyers, Attys. Ilagan, Arellano and Risonar, Jr., FLAG (Free Legal Assistance Group) human rights lawyers of Davao City, were illegally arrested and brought to the military stockade at Camp Catitipan, Davao City one after the other on May 10, 11 and 13, 1985, upon mission orders issued by the prime mover and initiator of the operations, respondent General Dionisio S. Tan-Guate, Jr. (hereinafter referred to as respondent general). The mission orders (which are military orders for carrying out a specific mission or military operation) are not warrants of arrest, much less Preventive Detention Actions (PDA's). The orders did not state what were the offenses allegedly committed, although indicating that they were being issued pursuant to a PDA, which was never shown nor produced by respondent general until a xerox copy thereof dated as early as January 25, 1985 was submitted with the respondents' return to the writ. No copy thereof was given the petitioners nor were they given any reason for which the three lawyers were taken into military custody.

The first lawyer, Atty. Ilagan, was picked up at 10:45 a. m. on May 10[th] while taking a snack with some friends at a place in front of his office at C. M. Recto St. His military arrestors denied his request to be allowed to go to his office "a few meters away" so he could give instructions to his associates about a case scheduled for hearing that afternoon.[3] The second lawyer, Atty. Arellano, a law professor at the Ateneo de Davao law school, was one of fifteen IBP. Davao Chapter lawyers who insisted on visiting Atty. Ilagan at the military camp on May 11[th] despite the military custodians' initial refusals that no visitors could be allowed "unless first cleared by R-2 (intelligence) or Gen. Tan -Guate's aide." After the visit, he was told that he was under arrest under the mission order which was merely shown to him and he was no longer allowed to leave the camp. As he told the Court: "I just (went) to visit my colleague, a member of the IBP, to render legal assistance as I'm supposed to do as an officer of the Court. I came to visit, I came to render legal assistance. I was arrested and detained." [4] On May 13th, the third lawyer, Atty. Risonar, Jr., having received word from the military that he was wanted, presented himself at Camp Catitipan. He was not shown even the mission order, much less a PDA or warrant of arrest. He was so shaken up by the traumatic experience of being himself wanted and arrested by the military (not having been given even a traffic violation ticket in his whole life) instead of his accustomed role of helping hapless persons who have come across their path and assisting as a member of the Human Rights Committee "not only political detainees, but workers, students, teachers and urban community" that he almost broke down at the hearing and had to be asked to take firm hold of himself.[5]

After the filing of the petition at bar and the issuance of the writ of habeas corpus to produce in court the persons of the three lawyers at the scheduled May 23[rd] hearing, they were transferred at 10 p.m. of the night of May 20th to the Metro-Discom stockade in Davao City and herded with a fourth person in a cramped cell, "a very small cell, good only for 2 people." The next day, they were picked up by "2 PC jeeps loaded with fully armed men" and in the words of Atty. Arellano, "in the presence of the detainees in the stockade, ... many of whom are my clients and in the presence of their visitors, ... and in the presence of our wives, ... we were handcuffed like ordinary criminals, and we were transported from that stockade up to the airport and from the airport we were brought to Manila and then we were brought to Camp Bicutan." [6] They have been since detained there, their lives shattered, uprooted from their homes and families, and deprived of their livelihood and their families left to fend for themselves.

The Integrated Bar of the Philippines and other petitioners complain in their verified petition that "(B)eyond the harassment and the illegal arrest and detention of these three advocates, are grave implications for the craft. Their arrest appears to be a prelude to a campaign to ultimately deprive the accused in national security cases of the services of counsel in violation of the Constitution," citing "a readily discernible pattern from events in the recent

past" including the killings of FLAG Atty. Zorro C. Aguilar and newsman Jacobo Amatong who gave an ante-mortem statement "that it was the military that shot them" in Dipolog City on September 23, 1984 and the killing of Atty. Romaflo R. Taojo in his own home in Tagum, Davao del Norte on April 2, 1985, who had been allegedly warned by the military about the nature of the cases he was handling. The petition further cited the case of petitioner MABINI trustee and co-founder Atty. Jojo Binay who was successful in having several criminal cases against his client Dr. Nemesio Prudente dropped, but in April this year "found himself a co-respondent with his client Dr. Prudente in a new subversion charge filed by the military with the provincial fiscal of Rizal." Also cited were the cases of Attys. Romeo Astudillo and Alberto Benesa, both former IBP Abra chapter presidents and Abra FLAG chairman and member, respectively, who in the same month of April this year "were arrested by the military, charged with subversion, and presently confined at the Constabulary stockade in Bangued, Abra. Since 1979, they were the only human rights lawyers in Bangued, Abra. Since their arrest, there are no lawyers anymore handling such cases." [7] Between the two of them, they reportedly handled a total of about 120 subversion cases and "not one of their clients was even convicted due to 'lack of evidence.'" [8]

The petition quoted respondent general's press statement issued on May 10[th] that "x x x the arrest of Ilagan, 'who had lately been engaged in human rights lawyering for suspected persons detained for subversion, rebellion and other charges' was 'long overdue.' (Business Day, May 13, 1985, p. 11)" [9] and the exertion of pressure upon other Davao human rights lawyers in this wise:

"The tension mounted when another lawyer Silvestre Bello III, BAYAN national organizing committee member, got word from Jesus Dureza, president of the Integrated Bar of the Philippines, Davao del Sur chapter, that Estares was 'inviting' Bello to Camp Catitipan. Bello, in an earlier interview, said they were assured by Estares that in case they would be slapped with a PDA, they would not be picked up like what happened to Ilagan but instead just 'be invited' to Camp Catitipan as in Arellano case.

"Estares, on the other hand, told Business Day they were just 'inviting' Bello to 'visit his friends,' PC-INP regional commander, Dionisio Tan-Gatue also told newsmen, in a phone interview that he was just inviting Bello to visit him. Tan-Gatue, however, declined to comment on whether or not there will be more arrests in the next few days. 'Just wait and see,' he said. (Business Day, May 13, 1985)

"The aforesaid report has been confirmed by the IBP Davao Chapter." [10]

The petition, noting that "(T)hese trends are ominous for members of the Bar especially those who are engaged in pro bono publico work who have incurred the ire of the military," [11] invoked the writ of habeas corpus as the great writ of liberty on behalf of the three lawyers. IBP President Emeritus J. B. L. Reyes made this eloquent plea against this Damocles' sword wielded by the military in that its value "is not that it falls but that it hangs, and it hangs over every lawyer at the present time, engaged or not in the defense of anybody":

"That is why, if Your Honors please, we have here all the representatives of the Bar organizations because they are all threatened under this method that is being adopted by the military, that anybody who thus ran against their ideas of what a citizen should do, becomes ipso facto suspect and ipso facto rebel or a subversive. And that is the reason why we've come to this Court, because with all this publicity. Even if only 3 or 5 lawyers are arrested all the others will be afraid. If Your Honors will recall that we are arguing the constitutionality of this PDA, we happened to quote from the United States Supreme Court, that the value of the Sword of Damocles is not that it falls but that it hangs, and it hangs over every lawyer at the present time, engaged or not in the defense of anybody. How do we know how many more lawyers will be in the future arrested." [12]

Or as then Associate (now Chief) Justice Makasiar in 1980 stressed before the Philconsa against the proposal then to return the administrative supervision of inferior courts from the Supreme Court to the Ministry of Justice: "The warning has been issued that a tyrant, who wants complete and absolute control over the people, will first seduce

and eliminate the lawyers and thereafter destroy the courts. This tragedy must be averted." [12-a]

Respondents' return made the startling charge that the three lawyers (all practitioners of long good standing since 1971, 1977 and 1976, family men and without any derogatory record) "have been arrested and detained because of evidence that they are members of the Communist Party of the Philippines or its partner, the National Democratic Front, and have been active in organizing mass actions intended to further the communist cause," and "(I)n truth, the PDA against the three lawyers was issued as early as January 25, 1985, shortly after the series of welgas conducted late in 1984. But, with the President's knowledge and concurrence, the military in Region 11 tried to withhold its implementation precisely in the hope that the need for such action would pass, forestalling a possible misinterpretation of the government's motive in making the arrest. The situation in Southern Mindanao has, however, deteriorated compelling the government to act swiftly, arrest the communist leaders behind the welga, and stem the tide of mass disturbance sweeping the area." [13] Ironically, while the state attorneys specifically pleaded that there is evidence that the three lawyers are communists, yet they invoke the Garcia-Padilla ruling that "the Court may not inquire into it" [14] and that "because of the suspension of the writ of habeas corpus, the Courts have no authority to look into this evidence" [15] which led then Chief Justice Fernando to ask in exasperation:

"CHIEF JUSTICE:

- Q But what is the connection between them? You can always, your pleading is quite extensive, but until now according to you there is evidence but you are not at liberty to reveal that evidence. What good will it do to the Court then? What is their [the lawyers] connection with the acts that are rebellious in character or subversive? That perhaps will give the possibility [for] their continued detention?" [16]

Still, at the hearing of May 23[rd], it was clearly stressed that notwithstanding that the PDA had been secured since January 25, 1985 by respondent general, supposedly "on the basis of evidence and verified reports", when questioned why no information had been filed against them "considering that as early as January 25, 1985 there had been [allegedly] evidence that they had committed subversion," respondents assured the Court that the detained lawyers would be "entitled to a hearing when the time comes that we file charges [which] will be decided by the prosecuting officer of the government" (upon interpellation of Mr. Justice Relova and reply of Assistant Solicitor General Eduardo G. Montenegro). [17] Respondents' counsel had at the hearing claimed that "these three lawyers compañeros of mine are active members of the Communist Party of the Philippines, [as] witnesses we have captured NPA's." He said that these statements given by former NPA's were shown him by military officers, but when questioned as to whether these statements were "newly prepared also or long existing," he was specifically warned against "swallowing hook, line and sinker" the assertions of such professional witnesses and of the imperative necessity of conducting an independent investigation, thus:

"JUSTICE CUEVAS:

Q What (did) your evidence consist of?

ASST. SOLGEN:

A Statements given by former members of the New Peoples Army, in Davao Your Honor, there are NPA's who surrendered and then subsequently....

JUSTICE CUEVAS:

Q And these evidences were in your possession long prior to the arrest and detention of these 3 lawyers?

ASST. SOLGEN:

A In our possession Your Honor no, sir, because I saw them only when we were preparing the return, Your Honor.

JUSTICE CUEVAS:

Q From whom did they come from, if you know.

ASST. SOLGEN:

A I was shown that by these Military Officers.

"JUSTICE CUEVAS:

Q Newly prepared also or long existing?

ASST. SOLGEN:

A Your Honor please, I

JUSTICE CUEVAS:

Q You answer positively because I'll ask them, when they were turned over to you were they newly prepared also? When were they prepared?

ASST. SOLGEN:

A I do not remember the date now but I was reading it. Anyway, Your Honor, the reason why we did not attach this to our return is this, that most of those

JUSTICE CUEVAS:

Q That is very material, simply because there is rebellion in the country I do not think it warrants the picking up of anybody?

ASST. SOLGEN:

A Yes, Your Honor.

JUSTICE CUEVAS:

Q That is following up under your theory?

ASST. SOLGEN:

A Yes, Your Honor, because the surrendered NPA's who gave those statements, at least 3 of them, have not yet been surfaced by the Government. Their identity are still not to be divulged because the Military is not through yet in its investigation with respect to these people. So they are not to be mentioned.

JUSTICE CUEVAS:

Q My theory because I had been a Fiscal also Mr. Assistant Solicitor General as you know, there are people who are, who had the appetite of giving any kind of affidavit. In fact, I had prosecuted an accused who is even willing to testify that he witnessed the shooting of Rizal in Luneta?

"ASST. SOLGEN:

A That may be true, Your honor.

JUSTICE CUEVAS:

Q You should not swallow 'hook, line and sinker,' that is our apprehension in particular?

ASST. SOLGEN:

A Yes, Your Honor. May I continue, Your Honor. Now, Atty. Ilagan, in particular

JUSTICE TEEHANKEE:

Q This is an appropriate time I believe, what Justice Cuevas has mentioned was that, in other words, you brought these affidavits?

ASST. SOLGEN:

A Yes, Your Honor.

JUSTICE TEEHANKEE:

Q But you have to check them out?

ASST. SOLGEN:

A Yes, Your Honor.

JUSTICE TEEHANKEE:

Q Check the background of these people and check out their assertions as against an independent investigation. As if they say on such and such a date Attorney Ilagan was in the mountains; you have to check that out, you can't just swallow on its own. There are so many of these professional witnesses?

ASST. SOLGEN:

A That may be true, Your Honor, there are professional witnesses, Your Honor.

JUSTICE TEEHAN KEE:

Q There are, you know that and we all know that.

ASST. SOLGEN:

A Yes there are. Now, may I continue, Your Honor.

"CHIEF JUSTICE FERNANDO:

A Yes, but please you must go directly."[18]

CHIEF JUSTICE FERNANDO:

Q We've heard that before but again [what is] the connection of these people?

SOLICITOR ABAD:

A Well, the position of the Military is that

CHIEF JUSTICE FERNANDO:

Q They are human rights lawyers, they have been defending several persons accused of crimes of and they had been doing as members of the Bar. Now they are picked up and apprehended, at least justify that.

SOLICITOR ABAD:

A Well, I appreciate that, Your Honor please, anyone belonging to the middle forces who campaign in the open to organize the populace for support to the revolution must really have some fronts, because when it comes to a revolution

CHIEF JUSTICE FERNANDO:

Q But again you say they are the front of these people, where is the evidence to substantiate this conclusion? They are all naked assertions thus far?

JUSTICE TEEHANKEE:

Q Mr. counsel, your theory seems that anybody who joins in a protest or a demonstration against grievances and abuses as perceived by them is a joining this middle force is a communist already?

SOLICITOR ABAD:

A That is certainly not our theory, Your Honor, that is not the theory of the Government."^[19]

After the hearing, and as already indicated, the Court ordered the immediate release of the three lawyers-detainees on recognizance of their principal counsel per its Resolution of May 23^[rd], which it expressly ordered to be "immediately executory." But the camp commander at Camp Bagong Diwa did not honor the Court's release order, saying that "it had to be verified from higher authorities." So, petitioners filed their manifestation and motion on May 24^[th], reporting the non-release and praying that the immediate release of the three lawyers on recognizance of their principal counsel be effected in the premises of the Supreme Court, as had been done in previous past cases.

On the next day thereafter, May 25^[th], respondents filed an urgent motion for reconsideration, invoking anew the Garcia-Padilla ruling^[20] that the courts could not entertain petitions for habeas corpus of persons detained under Presidential Commitment Orders (now supplanted by PDA's).

Without awaiting this Court's action on their aforesaid motion for reconsideration, respondents, particularly respondent general, somehow got the city fiscal of Davao City to precipitately file on May 27, 1985, without any preliminary investigation, an information against the three petitioners-lawyers for the capital crime of rebellion with the Regional Trial Court of Davao, Branch X.^[21] The said trial court grossly disregarding the deference that all inferior courts should accord this Court as the highest court of the land (since the military's equally gross disregard of this Court's May 23^[rd] order for the release of petitioners-lawyers was a matter of public notice, having been prominently reported in all national and local newspapers), just as precipitately issued a warrant of arrest with no bail against said petitioners-lawyers. Respondents then filed on May 28^[th] their Urgent Manifestation/Motion, annexing copies of the information and warrant of arrest, praying for the dismissal of the habeas corpus petition at bar on the ground that it has become moot and academic.

In their required comment on the state's action, petitioners-lawyers stated that the fiscal misinvoked section 7, Rule 112 which allows the filing of an information without preliminary investigation "when the person is lawfully arrested without a warrant," i.e. in flagrante delicto (which is not the case here). They asserted petitioners' constitutional right to due process and the right to a preliminary investigation as granted by statute and expressly assured to them in open court at the May 23^[rd] hearing. They denounced the "cabal among military authorities and the prosecution arm of the government" with the contumacious cooperation of the trial court to deprive them of due process and to circumvent this Court's release order, as follows:

"3.1. Preliminary investigation is instituted to secure the innocent against hasty, malicious and oppressive prosecution and to protect him from an open and public accusation of crime, from the trouble, expense and

anxiety of public trial, and also to protect the state from useless and expensive trials. The right to preliminary investigation is a statutory grant and to withhold it would be to transgress constitutional due process. *Salonga v. Hon. Ernani Cruz Paño*, G.R. No. 59254, February 18, 1985, citing *Trocio v. Manta*, 118 SCRA 241; *Hashim v. Boncam*, 71 Phil. 216; *People v. Oandasa*, 25 SCRA 277.

"3.2. Petitioners having been deprived of their constitutional right to due process by the Fiscal of Davao, therefore, the information for rebellion filed against them is void.

"3.3. The information filed by the Fiscal of Davao being void, the Regional Trial Court of Davao has acquired no jurisdiction over the case of rebellion filed against petitioner. Therefore, all orders, warrants, processes, and issuances of the Court relative to the case, including the warrant for their arrest, are issued without authority and therefore null and void.

"3.4. What becomes evident in the face of these developments is a cabal among military authorities and the prosecution arm of the government to bend and short circuit rules in order to deprive petitioners of their right to due process guaranteed by the Constitution, and to circumvent the order of this Court for their release. It is deplorable that the Regional Trial Court of Davao has lent itself to this conspiracy to undermine the Constitution and the authority of this Court.

"3.5. All proceedings and orders in connection with the case of rebellion against petitioners being of no legal effect, these cannot have the consequence of rendering the case moot and academic." [22]

II. The merits of the petition. — I have gone to great lengths to restate hereinabove the antecedent facts as established by the pleadings and annexes of record and the hearing held by the Court on May 23[rd]. I submit that on the basis of these established facts, the "sacred constitutional rights [and] also the right to 'due process' which is fundamental fairness" as imperatively stressed by the majority decision in the recent case of *Galman vs. Hon. P. J. Pamaran* [23] have been grossly denied the three lawyers-detainees. This Court's "immediately executory" release order of May 23[rd] (issued over four months ago) should be forthwith honored and complied with. Far from having rendered the petition as moot and academic, all the railroaded proceedings and orders charging the three petitioners-lawyers with instant rebellion in gross disregard of the pendency of this case and of the assurance given in open court that the petitioners-lawyers would be entitled to a hearing and a preliminary investigation in obedience to the constitutional mandate that "no person shall be deprived of life, liberty or property without due process of law" and "no person shall be held to answer for a criminal offense without due process of law," [24] should be declared null and void. They were patently void, having been issued without jurisdiction under the well-settled rule that "a violation of a constitutional right divests the court of jurisdiction; and as a consequence its judgment [or order] is null and void and confers no rights." [25] At the very least, all proceedings in the instant rebellion case before the Davao trial court should be suspended and enjoined until the petitioners-lawyers are granted their right to a preliminary investigation and the opportunity to confront their accusers and disprove the charges; meanwhile, it is but part of due process that they be set free as ordered by the Court and be enabled to prepare their defense. The petition under the great writ of habeas corpus to set them at liberty should accordingly be granted for the following fundamental reasons and considerations: —

1. Basic Right to Due Process. — The Bill of Rights expressly mandates that "x x x no search warrant or warrant of arrest shall issue except upon probable cause to be determined by the judge, or such other responsible officer as may be authorized by law, after examination under oath or affirmation of the complainant and the witnesses he may produce, and particularly describing the place to be searched, and the persons or things to be seized." [26] This plainly means that generally no person may be held to answer for a criminal offense without a preliminary investigation. The right to a preliminary investigation is statutorily granted for serious offenses and to deny it violates the right to due process guaranteed by the Constitution. [27] Preliminary investigation has been instituted precisely to secure the innocent against hasty, malicious and oppressive prosecution. Moreover, the instant

rebellion case filed against the petitioners manifestly falls under three recognized exceptions to the general rule that criminal prosecution may not be blocked by court prohibition or injunction, namely, "1. for the orderly administration of justice; 2. to prevent the use of the strong arm of the law in an oppressive and vindictive manner; x x x; and 4. to afford adequate protection to constitutional rights. x x x." [28]

2. Petitioners-lawyers denied due process. — The blitzkrieg filing of precipitate vindictive and oppressive charges against petitioners-lawyers for the capital crime of rebellion without hearing and preliminary investigation deprived them their right to due process and the rudimentary requirements of fair play. As the majority, quoting former Chief Justice Enrique M. Fernando, emphasized in the recent case of *Galman vs. Pamaran*, supra, [29] "due process x x x is responsiveness to the supremacy of reason, obedience to the dictates of justice. Negatively put, arbitrariness is ruled out and unfairness avoided. To satisfy the due process requirement, official action, to paraphrase Cardozo, must not outrun the bounds of reason and result in sheer oppression. Due process is thus hostile to any official action marred by lack of reasonableness. Correctly, it has been identified as freedom from arbitrariness. It is the embodiment of the sporting idea of fair play x x x It exacts fealty 'to those strivings for justice' and judges the act of officialdom of whatever branch 'in the light of reason drawn from considerations of fairness that reflect (democratic) traditions of legal and political thought.' x x x It is not a narrow or 'technical conception with fixed content unrelated to time, place and circumstances,' x x x decisions based on such a clause requiring a 'close and perceptive inquiry into fundamental principles of our society.' x x x Questions of due process are not to be treated narrowly or pedantically in slavery to form or phrases. x x x." 29-a

3. Right to preliminary investigation. — The May 23[rd] hearing brought out the importance of preliminary investigation to prevent hasty and baseless prosecution, since respondents could not cite concrete evidence of specific criminal acts committed by respondents. Respondent general secured the PDA on January 25, 1985 on the basis of affidavits of surrendered NPA's supposedly incriminating the petitioners, which was issued "on the basis of evidence and verified reports that the (petitioners-lawyers) have committed subversion and/or acts inimical to public safety, national security and public order." [30] Respondents would cavalierly tag the petitioners-lawyers as having gone "beyond purview of lawyering, but even to the extent of attending CPP and NPA rites, and using their profession as lawyers as cover-up for their activities in furtherance of CPP goals and objectives," as per the affidavit executed under date of January 22, 1985 by the Davao intelligence chief, Lt. Col. Nelson J. Estares. [31] As pointed out by petitioners in their verified traverse, this affidavit has no probative value. It is not based on the affiant's direct knowledge but offers hearsay, on his alleged interviews with surrendered NPA's and "to the best of [his] knowledge and ability." It would have been a simple matter for the alleged witnesses to have executed their own affidavits. In turn, petitioners have categorically denied that they are members of the CCP or NDF. Attys. Ilagan and Arellano said in open court that they are chairman and secretary-general, respectively, of BAYAN-Mindanao, affiliated with the national organization of BAYAN (Bagong Alyansang Makabayan) with former Senators Lorenzo M. Tañada and Ambrosio Padilla as chairman and vice-chairman, respectively, and among whose national leaders is former Manila Times publisher Joaquin "Chino" P. Roces. But strangely enough, while the aforesaid documents were executed in January, 1985 to secure the PDA for subversion against petitioners, the instant charge filed without hearing by the fiscal apparently based on the same affidavits is now for rebellion, which would involve the petitioners rising in arms. The whole point is that petitioners-lawyers have squarely presented to this case the undeniable and undisputed facts that they have been denied their right to preliminary investigation and to show the utter falsity of the charge of instant rebellion against them. Such right was assured them in open court by the State's attorneys. It is this Court which must grant petitioners this right, and uphold their right to due process. The obiter dictum cited by the majority decision from the case of *Medina vs. Orozco* [32] that "the proper forum before which absence of preliminary investigation should be ventilated is the Court of First Instance, not this Court" has no application. There, this Court found that not only was a preliminary

investigation made, but also a subsequent reinvestigation upon his motion, after which the case against the accused proceeded to trial.

4. Professional witnesses of military not checked out. — As shown above, *supra*,^[33] as admitted by the State attorneys, there are so many professional witnesses presented by the military in such cases, whose statements should not be "swallowed hook, line and sinker." The ex-parte affidavits of the alleged surrendered NPA's could be checked out as against their background and an independent investigation only in a preliminary investigation. Such affidavits and statements have been found to be completely worthless in other cases. In the habeas corpus case of Aristedes Sarmiento, he and his wife were charged with subversion on March 31, 1983, as ranking leaders of the NPA, after they had been "invited" and detained at the military camp in Gumaca, Quezon on October 9, 1982. After the prosecution rested its case, the trial court granted the defense' motion for dismissal of the charges for utter "worthlessness of evidence." The trial court ruled that "(I)ndeed, there is nothing that the Armed Forces of the Philippines or any of the law enforcement agencies of the Government could offer to prove any connection of the Sarmiento couple with any subversive organization, even with the New People's Army, if ever it is to be considered such, and much more as leaders thereof." This led to an apparently unheeded call from the now Chief Justice that "The military establishment should inquire into whether the President was deceived into issuing the PCO and who initiated the arrest of the couple without supporting evidence." In petitioners' verified traverse, they point out that respondents' "star witness" against petitioners is one Calixto Alegado III, an alleged former NPA who is now a member of the Philippine Constabulary. They state that Calixto Alegado III is precisely one of those professional witness unworthy of credence who has testified in a number of national security cases and who should be checked out in an independent investigation as assured by the State attorneys at the May 23rd hearing, thus: "In Criminal Case No. 9198 before the Regional Trial Court of Davao entitled *People of the Philippines v. Carlito Gaspar*, Alegado testified that he witnessed the accused therein giving lectures for the CPP/NPA at dates when the accused Carlito Gaspar was either in Manila or out of the country, more specifically in Australia and Latin America. On the basis of this affiant's testimony together with other supposed former CPP/NPA members, the Regional Trial Court found Alegado not worthy of belief and acquitted Gaspar. It is significant to point out here that the counsel of Carlito Gaspar in that case is petitioner Atty. Laurente Ilagan."^[34]

5. Protective mantle of this Court. — The unlawful arrest and detention of the petitioners-lawyers has completely uprooted their lives. This Court must extend them its protective mantle as officers of the courts, because of the strong indications, *supra*,^[35] of "ominous trends" for lawyers "who are engaged in pro bono publico work who have incurred the ire of the military," such as in the case of *Abra*, where there are no more lawyers handling subversion cases because the only two human rights lawyers handling such cases have been charged with subversion and locked up in the stockade. As formulated by Justice J. B. L. Reyes in response to a question of Mr. Justice Gutierrez why the lawyers were picked out for criminal charges (when there were non-lawyers who also led the *welga*), "(Y)es, precisely they pick the lawyers because I suppose they figure out that in fact the lawyers are actually social leaders in their respective communities. That is why, if Your Honors please, we are pleading this Court for the protection because after all the lawyers are officers of the Court, and if the Court will not protect them, who will? Certainly not the Military. We certainly hope that a lawyer will not, in the long run, will not be asking the NPA for protection, because nobody else wants to protect them".^[36]

6. People's right of assembly. — The people's right to freedom of expression and to peaceably assemble and petition the government for redress of grievances are fundamental constitutional rights. Mass demonstrations popularly termed as *welgang bayan* constitute a legitimate exercise of these basic constitutional rights. Indeed, as the Court stressed in *Jose B. L. Reyes vs. Ramon Bagatsing*^[37] "The sole justification for a limitation on the exercise of this right, so fundamental to the maintenance of democratic institutions, is the danger, of a character both grave and imminent, of a serious evil to public safety, public morals, public health, or any other legitimate

public interest." The Court therein reminded the police (and the military for that matter) of their duty to extend protection to the demonstrators/participants "staying at a discreet distance, but ever ready and alert to perform their duty." It further admonished that should any disorderly conduct or incidents occur, whether provoked or otherwise, such incidents of disorderly conduct by individual members of a crowd should not be seized "as an excuse to characterize the assembly as seditious and tumultuous rising against the authorities" and render illusory the right of peaceable assembly.[38]

The military must overcome their allergy if not aversion to such welgas. Acting AFP Chief of Staff Lt. Gen. Fidel V. Ramos recently correctly urged those involved in law enforcement and criminal justice system to "keep themselves up-to-date on the [changing] law and jurisprudence and the intricacies of implementation" adding that "as law enforcers they must be convinced by heart that they enforce the law and never violate it." [39]

Petitioners candidly state in their verified traverse that "(T)he possibility that the Communist Party of the Philippines and the National Democratic Front may have participated in or used the events for their own purposes may be assumed for purposes of argument. It is not fair inference from this assumption that all those who participated in any significant degree in the strikes and the activities held in connection therewith are members of the Communist Party of the Philippines or the National Democratic Front,"[40] but they rightfully submit that "(T)o conclude that persons who participate in such mass activities are communists or subversives and to restrain them in their freedom as a consequence is the worst form of witchhunting violative of all principles of fair play and due process." [41]

In the Philippine Blooming Mills case[42] this Court set aside the industrial court's decision dismissing from employment the workers' labor union's eight officers for having led and carried out a "temporary stoppage of work" to hold a mass demonstration at Malacañang of all the workers on March 4, 1969 in protest against alleged abuses of the Pasig police. It held that such dismissal was violative of the workers' legitimate exercise of their constitutional rights of free expression, peaceable assembly and petition for redress of grievance, thus:

"x x x Recognition and protection of such freedoms are imperative on all public offices including the courts (as well as private citizens and corporations x x x when even a law enacted by Congress must yield to the untrammelled enjoyment of these human rights. There is no time limit to the exercise of these freedoms. The right to enjoy them is not exhausted by the delivery of one speech, the printing of one article or the staging of one demonstration. It is a continuing immunity, to be invoked and exercised when exigent and expedient whenever there are errors to be rectified, abuses to be denounced, inhumanities to be condemned. Otherwise, these guarantees in the Bill of Rights would be vitiated by a rule on procedure prescribing the period for appeal. The battle then would be reduced to a race for time."

7. Preservation of liberties and motives. — Good faith must be presumed as well on the part of respondents as of petitioners-lawyers. The good motive but misplaced overzealousness of the military, particularly as headed by respondent general in the Davao area, may be noted, obsessed as they are with keeping peace and order. But it seems appropriate and timely to cite the pointed reminder of the late Mr. Justice William Douglas as reproduced in the PBM case, as follows:

"The challenge to our liberties comes frequently not from those who consciously seek to destroy our system government, but from men of goodwill — good men who allow their proper concerns to blind them to the fact that what they propose to accomplish involves an impairment of liberty.

"x x x The Motives of these men are often commendable. What we must remember, however, is that preservation of liberties does not depend on motives. A suppression of liberty has the same effect whether the suppressor be a reformer or an outlaw. The only protection against misguided zeal is constant alertness of the infractions of the guarantees of liberty contained in our Constitution. Each surrender of liberty to the demands

of the moment makes easier another, larger surrender. The battle over the Bill of Rights is a never ending one.

"x x x The liberties of any person are the liberties of all of us.

"x x x In short, the liberties of none are safe unless the liberties of all are protected."43

The record of the May 23[rd] hearing highlights the imperative importance of the injunction that no matter how worthy the motive may be, the authorities, civilian or military, should not suppress the people's liberties, and push the aggrieved citizen in despair towards the NPA or the communists; and respect their constitutional rights as otherwise there would be no difference as against the outlaws or rebels. For as Brandeis called it, "Crime is contagious. If the government becomes the lawbreaker, it breeds contempt for the law, it invites every man to become a law unto himself; it invites anarchy." The record again underscores the utter lack of evidence to support the unlawful arrest and detention of the three petitioners-lawyers, thus:

"JUSTICE TEEHANKEE:

Q All right, I will ask one more question on that. Since it was organized, this Mindanao Chapter, in April, you already had a PDA in January. Did you not or the Military exercise strict surveillance daily over the activities of these people? So that you can catch them with the goods?

SOLICITOR ABAD

A Well, it is not that simple, if Your Honor please, because rebellion is riot a crime committed (with) not exactly with bouncing checks or similar crimes.

JUSTICE TEEHANKEE

Q True, that's very true, but?

SOLICITOR ABAD

A So precisely a good rebel is one who is not caught, he was able to lose himself in the populace. How can we expect let's say a member of a front organization of the NPA will carry an ID, if Your Honor please.

JUSTICE TEEHANKEE

Q But you have to look into the record of the individual.

SOLICITOR ABAD

A I think they have, Your Honor.

"JUSTICE TEEHANKEE

Q You have to look into the record of these individuals here, lawyers, members of the Bar of good standing, without any derogatory record, is it within the ordinary course of human conduct that they would prostitute their profession, pervert it and serve as fronts?

SOLICITOR ABAD

A Horacio Morales, Your Honor, was a Government Executive, in the same manner as Atty. Ocampo was a good journalist, but they admitted they have turned to the communist side. We cannot say that a background of a man is sufficient guarantee but he is not going to join the rebellion.

JUSTICE TEEHANKEE

Q As far as Morales is concerned he gave up on reforms, he was desperate; that is why he says there is no other way

SOLICITOR ABAD

A Well, that's what I mean, if Your Honor please, an individual supplace (sic) society, the old society

JUSTICE TEEHANKEE

Q Society (should) not push the aggrieved citizen towards the NPA or the communist party as a last resort. And therefore, we must observe their Constitutional rights. Otherwise, there is no difference?

SOLICITOR ABAD

A There were 3 million people who were unable to use the streets of Davao, if Your Honor please, its their constitutional rights to travel to bring their sick to the hospitals and were violated by these

JUSTICE MAKASIAR

Q Compañero, your position is that history is replete with examples of traitors and quislings from high society or high Government circles. But the question is, while you affirm the fact that the communist is not necessarily open or overt, he is usually engaged in covert activities. Now what are the examples of these covert activities of these people? What is your evidence?

SOLICITOR ABAD

A Well, I read from a very authoritative document of the communist party of the Philippines.

"JUSTICE TEEHANKEE

Q That's begging the question?

JUSTICE MAKASIAR

Q And they deny? The communist party they accept membership the Alyansa?

SOLICITOR ABAD

A Financial support, telling over the populace into supporting the rebellion; driving them away from the Government; giving financial support; harboring them in their homes. While these are not armed assistance given to the rebel, if Your Honor please, but its the duty also of the Government to

JUSTICE MAKASIAR

Q the various dates of harboring them in their homes; the financial contributions made by them on such and such a date, how much? Those are the particulars to support the conclusion that they had contributed, they were harboring them?

SOLICITOR ABAD

A Well, as I said we have the evidence, the only problem is we are not prepared to produce now the evidence."[43-a]

Indeed, in their Urgent Motion for Reconsideration of the Court's May 23[rd] release order, respondents, "having obtained clearance for the declassification of the needed materials" submitted their "evidence," consisting of hearsay military reports (rather than the direct affidavits of credible witnesses) and the affidavit of a discredited and perjured professional witness, an alleged NPA, now a member of the Philippine Constabulary, *supra*. [43-b] No concrete evidence whatever has been submitted therein against petitioners-lawyers, other than to recklessly red-brush their legitimate organization (BAYAN-Mindanao) as communist-led or infiltrated front organizations — and to characterize the series of welgas or strikes in Mindanao as implementation of the NDF program of activities to organize and mobilize the "middle forces" of society, *supra*. [43-c]

8. Basic concepts and principles of freedom — The PBM case, citing numerous precedents, restated basic concepts and principles which, to my mind, underlie and are determinative of the issues at bar, as follows:

"(1) In a democracy, the preservation and enhancement of the dignity and worth of the human personality is the central core as well as the cardinal article of faith of our civilization. The inviolable character of man as an individual must be 'protected to the largest possible extent in his thoughts and in his beliefs as the citadel of his person.' [44]

"(2) The Bill of Rights is designed to preserve the ideals of liberty, equality and security 'against the assaults of opportunism, the expediency of the passing hour, the erosion of small encroachments, and the scorn and derision of, those who have no patience with general principles.' [45]

"In the pithy language of Mr. Justice Robert Jackson, the purpose of the Bill of Rights is to withdraw 'certain subjects from the vicissitudes controversy, to place them beyond the reach of majorities and officials, and to establish them as legal principles to be applied by the courts. One's rights to life, liberty and property, to free speech, or free press, freedom of worship and assembly, and other fundamental rights may not be submitted to a vote; they depend on the outcome of no elections.' [46] Laski proclaimed that 'the happiness of the individual, not the well-being of the State, was the criterion by which its behaviour was to be judged. His interests, not its power, set the limits to the authority it was entitled to exercise.' [47]

"(3) The freedoms of expression and of assembly as well as the right to petition are included among the immunities reserved by the sovereign people, in the rhetorical aphorism of Justice Holmes, to protect the ideas that we abhor or hate more than the ideas we cherish; or as Socrates insinuated, not only to protect the minority who want to talk, but also to benefit the majority who refuse to listen. [48] And as Justice Douglas cogently stresses it, the liberties of one are the liberties of all; and the liberties of one are not safe unless the liberties of all are protected. [49]

"(4) The rights of free expression, free assembly and petition, are not only civil rights but also political rights essential to man's enjoyment of his life, to his happiness and to his full and complete fulfillment. Thru these freedoms the citizens can participate not merely in the periodic establishment of the government through their suffrage but also in the administration of public affairs as well as in the discipline of abusive public officers. The citizen is accorded these rights so that he can appeal to the appropriate governmental officers or agencies for redress and protection as well as for the imposition of the lawful sanctions on erring public officers and employees.

"(5) While the Bill of Rights also protects property rights, the primacy of human rights over property rights is recognized. [50] Because these freedoms are 'delicate and vulnerable, as well as supremely precious in our society' and the 'threat of sanctions may deter their exercise almost as potently as the actual application of sanctions,' they 'need breathing space to survive,' permitting government regulation only 'with narrow specificity.' [51]

"Property and property rights can be lost thru prescription; but human rights are imprescriptible. If human rights are extinguished by the passage of time, then the Bill of Rights is a useless attempt to limit the power of

government and ceases to be an efficacious shield against the tyranny of officials, of majorities, of the influential and powerful, and of oligarchs — political, economic or otherwise.

"In the hierarchy of civil liberties, the rights of free expression and of assembly occupy a preferred position as they are essential to the preservation and vitality of our civil and political institutions;[52] and such priority 'gives these liberties a sanctity and a sanction not permitting dubious intrusions.'[53]

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"In seeking sanctuary behind their freedom of expression as well as their right of assembly and of petition against alleged persecution of local officialdom, the employees and laborers of herein private respondent firm were fighting for their very survival, utilizing only the weapons afforded them by the Constitution — the untrammelled enjoyment of their basic human rights. x x x Material loss can be repaired or adequately compensated. The debasement of the human being — broken in morale and brutalized in spirit — can never be fully evaluated in monetary terms. The wounds fester and the scars remain to humiliate him to his dying day, even as he cries in anguish for retribution, denial of which is like rubbing salt on bruised tissues."[54]

9. The express teaching of the Salonga case. — The express teaching on freedom of expression, based on numerous precedents, of this Court's unanimous decision (11 members with 3 abstentions) in the case of *Salonga vs. Paño*[55] should dispel the apparent misconception on the part of the military, as well as certain government prosecutors, that militant protests and demonstrations are seditious and subversive of the government. This Court set forth therein guiding and controlling constitutional principles and precepts governing constitutionally protected spheres and areas reserved by the Bill of Rights for the individual "where even the awesome powers of government may not enter at will," as follows: "x x x if there is any principle of the Constitution that more imperatively calls for attachment than any other it is the principle of free thought — not free thought for those who agree with us but freedom for the thought that we hate;" that "freedom of expression is a 'preferred' right and therefore stands on a higher level than substantive economic or other liberties;" that "this must be so because the lessons of history, both political and legal, illustrate that freedom of thought and speech is the indispensable condition of nearly every other form of freedom. Protection is especially mandated for political discussions. This Court is particularly concerned when allegations are made that restraints have been imposed upon mere criticisms of government and public officials. Political discussion is essential to the ascertainment of political truth. It cannot be the basis of criminal indictments;" that there must be tolerance of political hyperbole since "debate on public issues should be uninhibited, robust and wide open and it may well include vehement, caustic, and sometimes unpleasantly sharp attacks on government and public officials;" that "the constitutional guarantees of free speech and free press do not permit a State to forbid or proscribe advocacy of the use of force or of law violation except where such advocacy is directed to inciting or producing imminent lawless action and is likely to incite or produce such action;" that "political discussion even among those opposed to the present administration is within the protective clause of freedom of speech and expression. The same cannot be construed as subversive activities per se or as evidence of membership in a subversive organization" in the absence of proof that "such discussion was in furtherance of any plan to overthrow the government through illegal means;" and that "the judge or fiscal, therefore, should not go on with the prosecution in the hope that some credible evidence might later turn up during trial for this would be a flagrant violation of a basic right which the courts are created to uphold. It bears repeating that the judiciary lives up to its mission by vitalizing and not denigrating constitutional rights. So it has been before. It should continue to be so."

10. Peaceful and violent welgas. — If the military and the police but adhere to the aforecited basic democratic concepts and principles and recognize the people's constitutional right of assembly, protest and petition for redress of grievances and accordingly exercise forbearance and understanding, then the welgas will not and cannot erupt in violence. As emphasized in the *PBM* case, there is no time limit in the exercise of these basic freedoms of free

expression, peaceable assembly and petition for redress of grievances. The right to enjoy them is not exhausted "by the staging of one demonstration." It is a continuing immunity, to be exercised whenever there are errors to be rectified, abuses to be denounced, inhumanities to be condemned. This is borne out by the numerous demonstrations, rallies and welgas in Manila, Bataan and many other provinces. The welgang bayan in Bataan against the nuclear plant which paralyzed the whole of the province for three days last June were carried out peacefully without any violence, despite certain critical moments when the provincial commander ordered his forces to advance thru a blockade manned by some 4, 000 people. He later withdrew his orders after a dialogue with the protestors. The behaviour of both the military and the demonstrators merited commendations from all sectors. The President himself was quoted as saying that "the official policy of maximum tolerance in dealing with mass demonstrations paid off during the Welgang Bayan in Bataan." [56]

In this case, the May 2-3, 1985 welgang bayan which incurred the ire and displeasure of the military was carried out without any ugly incidents. But the aggressiveness and intolerance of the military and CHDF forces in Escalante, Negros Occidental turned the welgang bayan there into a bloodbath last September 20[th]. Some thirty demonstrators, including women, were reported killed when government troops who were supposed to keep order during the rally opened fire at the massed crowd when some troublemakers reportedly tried to snatch their firearms. As observed in one editorial, "once government soldiers or police open fire on a rally crowd, the result would be a virtual massacre for the enforcers are better armed." [57] Indeed, the use of combat-ready and trigger-happy troops trained only to shoot-to-kill without any training in crowd control of demonstrators or rallyists should be restudied. As stated in my separate opinion in *Hildawa vs. Minister of Defense*, [58] "The Supreme Court stands as the guarantor of the constitutional and human rights of all persons within its jurisdiction and cannot abdicate its basic role under the Constitution that these rights be respected and enforced. The spirit and letter of the Constitution negates as contrary to the basic precepts of human rights and freedom that a person's life be snuffed out without due process in a split second even if he is caught in flagrante delicto — unless it was called for as an act of self-defense by the law agents using reasonable means to prevent or repel an unlawful aggression on the part of the deceased."

11. The Stale PDA. — I will not deal here with the serious question raised by petitioners as to the validity of the PDA issued by the President under date of January 25, 1985 for the arrest and detention of the three petitioners-lawyers for having "committed subversion and/or acts inimical to public safety, national security and public order." This question is better resolved in the separate case filed by the Integrated Bar of the Philippines for the declaration of unconstitutionality of the Presidential Decrees authorizing, among others, the issuance by the President of PDA's without the constitutional requirement that any officer issuing a warrant of arrest must personally examine the complainant and the witnesses he may present. [59] Suffice it to state that the PDA against petitioners was already inoperative and stale. It was issued on January 25, 1985. As respondent general himself states in the return, the military did not see any need to enforce it until after almost four months later on May 10 to 13 of this year. What is incomprehensible is that no copy certified or plain of the PDA could be shown to the petitioners upon their arrest, contrary to existing rules and instructions. A xerox copy of the PDA was first seen by them only with the filing of the respondents' return in this case on last May 23[rd].

Be that as it may, the PDA should be held to be inoperative and ineffectual. The facts and records as hereinabove stated patently show that the President was misled into precipitately issuing the same: —

A. By the President's own statement, he had declared that "he would issue the controversial Preventive Detention Action (PDA) orders only when national security would require it and that there is no present need for him to do it." [60] The PDA was issued on January 25, 1985. Under the implementing rules, it should have been served within forty-eight (48) hours since it covered persons outside Metro Manila (in Metro Manila, the prescribed

period of service is twenty-four [24] hours). The respondent general's own admission that there was no need to serve it until after almost four months later shows that there was no necessity for the peremptory issuance of the PDA last January 25[th].

B. The issuance of the PDA against the three petitioners-lawyers clearly do not fall within the two exceptions to the general rule provided in section 1 of P.D.1877, as amended, that all cases involving national security offenses "shall be referred to the provincial or city fiscal or to the proper court for preliminary examination or investigation in accordance with existing laws." The two exceptions provided in section 2 of the said P.D. are as follows:

"SEC. 2. Only upon proper warrant issued by the Court or other responsible officer as may be authorized by law, after examination under oath or affirmation of the complainant and his witnesses, shall the person or persons charged with the above-mentioned crimes be arrested and detained; Provided, however, That should a military commander or the head of a law enforcement agency ascertain that the person or persons to be arrested has/have committed, is/are actually committing, or is/are about to commit the above-mentioned crimes, or would probably escape or commit further acts which would endanger public order and safety as well as the stability of the state before proper warrant could be obtained, the said military commander or the head of law enforcement agency may apply to the President of the Philippines for a preventive detention action against the person or persons ascertained to be participants in the commission of the crimes referred to in Section 1 hereof, under the following circumstances:

(a) When resort to judicial processes is not possible or expedient without endangering public order and safety;

(b) When in the judgment of the President of the Philippines to apply for a judicial warrant may prejudice peace and order and the safety of the state like when it may jeopardize the continued covert intelligence/counter insurgency operations of the Government, or endanger the lives of intelligence and undercover agents whose identities would be revealed by the evidence against the person or persons covered by a preventive detention action."

There is no question here of judicial process not being possible or expedient. It is obvious from the facts of record that it would be absurd to say that the PDA could fall under the second exception that to apply for a judicial warrant would prejudice public order and the safety of the state. The mere gap of almost four months between its issuance on January 25[th] and its actual service on May 10-12 this year speaks for itself. Furthermore, as succinctly stated by petitioners in their verified traverse, "(A)s members of this Court pointed out in the hearing of May 23, 1985, the alleged PDA was issued as early as January 25, 1985. Petitioners were not hiding. They were regularly discharging their functions as lawyers, including visiting their clients in military camps. There was more than ample time from the issuance of the alleged PDA up to the time when petitioners were actually arrested and detained for respondents to place them under close surveillance so that concrete, credible evidence of their supposed criminal activities and connection might be established, 'to catch them with the goods' so to speak. With the manpower and the resources at the command of respondents, they have failed to produce that evidence." [61]

Indeed, as the ponente, Mme. Justice Herrera, notes in her additional opinion, which failed to gain the majority's concurrence, "it is my view that individuals against whom PDAs have been issued should be furnished with the original, or the duplicate original, or a certified true copy issued by the official having official custody of the PDA, at the time of apprehension. Pursuant to the Rules and Regulations Implementing Presidential Decree No. 1877, as amended by Presidential Decree No. 1877-A, the PDAs should also be enforced within 24 hours in the Metro Manila area or within 48 hours outside Metro Manila, upon receipt by the unit concerned. In this case, although the record does not show such date of receipt, the fact is that the PDA was issued on January 25, 1985 but the detained attorneys were arrested only on May 10 and 13, 1985, respectively. The four-month gap can give room for doubt as to its authenticity and whether, in fact, the detained attorneys posed 'any appreciable danger to national security and public order.'" (Emphasis supplied)

12. Civilian Supremacy. — Art. II, section 8 of our Constitution's Declaration of Principles and State Policies states that "Civilian authority is at all times supreme over the military." But the military here dragged its feet and refused to honor this Court's "immediately executory" release order of May 23[rd]. Without waiting for the resolution of its motion for reconsideration of the Court's release order, respondent general, who had secured the PDA, then filed the new charge of rebellion against petitioners and with the deplorable acquiescence of the city fiscal and the trial judge, the former filed the instant information for the capital crime of rebellion and the latter in turn issued the warrant of arrest without bail. Respondent general was quoted as saying that "The Supreme Court won in only one point. And that is, we had to file the charges much sooner"[62] — as if this Court were an adverse protagonist instead of the final arbiter and the third department of government vested by the Constitution with the judicial power to determine and adjudicate all justiciable disputes. The same general is quoted as replying in a letter of April 1, 1985 to Atty. Jesus G. Dureza, IBP Davao chapter (who was asking why detainees continue to languish in jail despite court decisions either releasing or acquitting them) that "To begin with, I believe it may be necessary to review our position on these cases (human rights cases). I express this need because, despite recent court decisions otherwise, I am morally convinced that some released suspected communist subversives are guilty." [63] This Court's decisions and orders form part of the law of the land. It is a sad day for civilian supremacy when the military do not feel bound by the verdict of the courts and would place themselves above the courts and require as a condition for executing its judgment that they be "morally convinced" by the judgment rendered.

To allow such usurpation and denigration of the Court's power of judicial review is to subvert, if not destroy, the Constitution and the Rule of Law. The survival of a democratic society rests on the Rule of Law, which depends on the existence of an independent judiciary.

I endorse and reproduce herein the impassioned appeal made by then Justice Makasiar in his address in 1980 before the Philconsa against the proposed return of the supervision of lower courts from the Supreme Court to the Ministry of Justice, *supra*, [64] as follows:

"On the rule of law rests the survival of a democratic state. But the rule of law depends on the existence of an independent judiciary. Those who (make the proposal), I hope, realize that the ill-effects of such a proposal will reach them and their children. Even at this late stage in our lives when we are about to fade from the scene, we cannot evade the tragic consequences of such a proposal; but those who will suffer more would be the succeeding generations — including the children of those proposing the subtle destruction of the foundations of the judicial system.

"In the evening of our lives, let us not emasculate one branch of the government that is the last sanctuary of our lives and our liberties — the judiciary. As an enduring legacy to the generations that will come after us, let us all continue to strengthen the Supreme Court and the entire judicial system.

"The contemporary scene demonstrates once again that injustice breeds dissidence which seethes and finally explodes into a violent and bloody revolution. To all human beings, the denial of justice is a mortal assault on life itself. Where the human spirit is brutalized by abuses and inequities, the ultimate hope for liberation lies in the force of arms, unless the courts can effectively enforce the rule of law.

"Our historical experience delineated the varied seeds of armed rebellion or insurrection with which all of you are familiar. The ruthless exploitation of peasants and laborers, the lust for and arrogance of power, unabated corruption, unequal application of the law, the prostitution of elections, despoliation of the national patrimony by a favored few, as well as the monopoly and manipulation of the supply and distribution of economic goods essential to man's existence — all constitute the many facets of injustice that provide the dynamics of open defiance of the status quo.

"The warning has been issued that a tyrant, who wants complete and absolute control over the people, will first seduce and eliminate the lawyers and thereafter destroy the courts.

This tragedy must be averted.

"To support any proposal that erodes the independence of the courts, abets subversion of the rule of law, undermines the stability of our democratic institutions, imperils the liberties of the individual, or gives aid and comfort to the enemies of the people — is akin to committing treason against the nation." (Emphasis supplied)

13. The Supreme Court as guardian and final arbiter of the Constitution. — The judiciary, as headed by the Supreme Court has neither the power of the sword nor the purse. Yet as the third great department of government, it is entrusted by the Constitution with the judicial power — the awesome power and task of determining disputes between litigants involving life, liberty and fortune and protecting the citizen against arbitrary or oppressive action of the State. The Supreme Court and all inferior courts are called upon by the Constitution "to protect the citizen against violation of his constitutional or legal rights or misuse or abuse of power by the State or its officers. The judiciary [assisted by the bar] stands between the citizen and the State as a bulwark against executive excesses and misuse or abuse of power by the executive as also transgression of its constitutional limitations by the legislature." [65]

The Constitution is basically a charter of limitations of governmental power and enshrines a system of separation of powers and checks and balances under which no man is the law nor above the law. It ordains the weakest department, the Supreme Court, as the guardian and final arbiter of the Constitution. It postulates and requires a free and independent judiciary, sworn to defend and enforce the Constitution and the law without fear or favor. It mandates that civilian authority is at all times supreme over the military. Like His Holiness, the Pope, the Supreme Court has no battalions, tanks or guns to enforce its decisions. Its strength lies in that its verdicts would be obeyed by the sheer moral force and truth of its judgments for as long as the Court kept the faith and confidence reposed in it by the people through the Constitution to render justice and sustained their moral conviction that through the Supreme Court, justice and the voice of reason and truth would prevail in the end. Under the Rule of Law, "Judicial decisions applying or interpreting the laws or the Constitution shall form a part of the legal system of the Philippines" (Art. 8, Civil Code) and the Executive and all its offices and agencies, and particularly the military, are called upon to execute the laws as so interpreted and adjudged by the courts and enforce obedience thereto. [65-a]

As restated by the late Justice Jose P. Laurel in the 1936 landmark case of *Angara vs. Electoral Commission*, [66] "The Constitution sets forth in no uncertain language the restrictions and limitations upon governmental powers and agencies. If these restrictions and limitations are transcended it would be inconceivable if the Constitution had not provided for a mechanism by which to direct the course of government along constitutional channels, for then the distribution of powers would be mere verbiage, the bill of rights mere expressions of sentiment, and the principles of good government mere political apothegms. Certainly, the limitations and restrictions embodied in our Constitution are real as they should be in any living Constitution." Justice Laurel pointed out that in contrast to the United States Constitution, the Philippine Constitution as "a definition of the powers of government" placed upon the judiciary the great burden of "determining the nature, scope and extent of such powers" and stressed that "when the judiciary mediates to allocate constitutional boundaries, it does not assert any superiority over the other department x x x but only asserts the solemn and sacred obligation entrusted to it by the Constitution to determine conflicting claims of authority under the Constitution and to establish for the parties in an actual controversy the rights which the instrument secures and guarantees to them."

Let all bear ever in mind that "(I)n a government of laws, existence of the government will be imperilled if it fails to observe the law scrupulously. Our government is the potent, omnipresent teacher. For good or ill, it teaches the

whole people by example. Crime is contagious. If the Government becomes the lawbreaker, it breeds contempt for the law, it invites every man to become a law unto himself, it invites anarchy. To declare that in the administration of the criminal law the end justifies the means would bring terrible retribution." [67]

14. Erroneous premises of the majority decision. —

A. The majority decision holds that under section 4, Rule 102 the writ of habeas corpus has served its purpose because of the judicial warrant of arrest issued by the Regional Trial Court. This is based on an erroneous premise that the trial court had such jurisdiction to issue the warrant of arrest, and that the denial of a preliminary investigation of petitioners-lawyers was a mere informality or defect. — As already emphasized hereinabove, the trial court was totally devoid and ousted of jurisdiction to issue a warrant of arrest because of the gross denial to petitioners-lawyers of their constitutional right to due process.

B. The majority decision holds that the filing of the information without preliminary investigation falls within the exceptions of Rule 112, sec. 7 and Rule 113, sec. 5 of the 1985 Rules on Criminal Procedure.[68] Again, this is erroneous premise. The fiscal misinvoked and misapplied the cited rules. The petitioners are not persons "lawfully arrested without a warrant." The fiscal could not rely on the stale and inoperative PDA of January 25, 1985. Otherwise, the rules would be rendered nugatory, if all that was needed was to get a PDA and then serve it at one's whim and caprice when the very issuance of the PDA is premised on its imperative urgency and necessity as declared by the President himself. The majority decision then relies on Rule 113, sec. 5 which authorizes arrests without warrant by a citizen or by a police officer who witnessed the arrestee in flagrante delicto, viz. in the act of committing the offense. Quite obviously, the arrest was not a citizen's arrest nor were they caught in flagrante delicto violating the law. In fact, this Court in promulgating the 1985 Rules on Criminal Procedure have tightened and made the rules more strict. Thus, the Rule now requires that an offense "has in fact just been committed." This connotes immediacy in point of time and excludes cases under the old rule where an offense "has in fact been committed" no matter how long ago. Similarly, the arrestor must have "personal knowledge of facts indicating that the [arrestee] has committed it" (instead of just "reasonable ground to believe that the [arrestee] has committed it" under the old rule). Clearly, then, an information could not just be filed against the petitioners without due process and preliminary investigation.

C. The majority decision's rationale that the Nolasco case invoked by petitioners is not applicable here since the trial court had granted bail to Nolasco for a number of non-capital offenses, whereas in this case petitioners are charged with the capital offense of rebellion and the trial court has not allowed bail. This is erroneously premised. As already emphasized above, the instant information for rebellion against petitioners is null and void for denial of due process. What remains is the PDA, just like in the Nolasco case. There, the trial court granted bail. Here, it is this Court that has granted bail in the form of its May 23[rd] "immediately executory" release order. It certainly would be judicial anathema that this Court ordered compliance with the bail order of the trial court in the Nolasco case and yet feel impotent to enforce its own "immediately executory" release order of the petitioners-lawyers upon their counsel's recognizance. More so, when the petitioners are members of the Philippine Bar and officers of this Court.

The irony of the situation can be thus depicted. Had this Court simply ordered the immediate enforcement without delay of its May 23[rd] order, by May 24[th], the petitioners would have not been under detention. There would be no basis to claim that they were "lawfully arrested without warrant" and therefore could be instantly charge for the most heinous crimes without preliminary investigation.

D. As stressed by the writer in German vs. Barangan,[69] "to require the citizen at every step to assert his rights and to go to court is to render illusory his rights." Here, the flaunting and disregard of the Court's immediately

executory May 23[rd] release order by not releasing the petitioners-lawyers so that it could be claimed that they fell under Rule 112, section 7 and considered as "lawfully arrested without warrant" wherein "the information may be filed by the fiscal without preliminary investigation having been first conducted, on the basis of the affidavit of the offended party or arresting officer or person" (which affidavit had long been executed since January, 1985 while the unlawful arrests were made on May 10-13 and in no way could be termed as in flagrante delicto) would render illusory petitioners' right to due process and preliminary investigation. The majority decision should properly apply the case of Abejuela cited by it[70] that the trial court is called upon "not to dismiss the information but hold the case in abeyance and conduct its own investigation or require the fiscal to hold a reinvestigation." Meanwhile, this Court's release order should be complied with without one moment's delay. Respondents' filing two days later on May 25[th] of an "urgent motion for reconsideration" could in no way cause or justify suspension or non-compliance with this Court's release order.

15. Same standard in Galman case of not jeopardizing accused's constitutional rights should be applied. — In the recent case of Galman vs. Pamaran, the majority held that "the only way to cure the law of its unconstitutional effects is to construe it in the manner as if IMMUNITY had in fact been offered [by the prosecution] (hence) the testimonies compelled thereby are deemed immunized under Section 5 of the same law. The applicability of the immunity granted by P.D. 1886 cannot be made to depend on a claim of the privilege against self-incrimination which the same law practically strips away from the witness." The same standard and concern of not placing the accused "in jeopardy of their constitutional rights" through denial of due process and their right to preliminary investigation should be applied here. The only way is to construe it in the manner as if this Court's release order had in fact been immediately complied with and petitioners could in no way be deemed as "lawfully arrested without warrant." Otherwise, the Rule on preliminary investigation would not be "cured of its unconstitutional effects" by allowing the railroading on May 27[th] of the instant information for rebellion without preliminary investigation thru respondent general's contumacious and unlawful act of disobeying the Court's May 23rd release order. This was the same standard that would have been applied in the Court's aborted decision in Eastern Broadcasting Corp. (DYRE) vs. Hon. Dans, Jr.[71] There, this Court brushed aside respondents' procedural arguments to dismiss the petition as "moot and academic" because of the non-renewal of the petitioner's radio broadcasting station's license from the time of its summary closure in 1980 up to the time of the Court's determination in July this year. Instead, as noted in the writer's separate opinion therein, this Court "serve(d) notice that in the exercise of the judicial power vested in it by the Constitution, it will issue the equitable writs of certiorari and mandamus to do substantial justice and restore the status quo. In this case, the summary closure of petitioner's radio station in 1980 having been declared null and void and no valid ground for non-renewal of its license having been shown, it is as if the said license has been duly extended up to the end of the current term or year. It is expected that respondents will forthwith return the crystal of the transmitter and place no further obstacle to the prompt reopening of the radio station so that petitioner may pick up the broken pieces and rightfully resume its operations (after almost five years of closure) in accordance with the judgment at bar." Applying this standard to the case at bar, would simply mean that the clock would simply be turned back to the day of this Court's immediately executory release order of May 23[rd] this year, as if the same order had been faithfully and lawfully complied with. Only thus could substantial and not paper justice be done and the petitioners be not deprived of their constitutional right to due process and be secured by preliminary investigation against hasty, oppressive and vindictive prosecution.

16. "The preservation of freedom, like its perfection, is a never ending struggle." — This was the exhortation of President Ferdinand Edralin Marcos at the observance at Fort Bonifacio last May 27[th] of American Memorial Day. He admonished the people that "democracy is a condition requiring constant vigilance. Neither totalitarianism nor authoritarianism can by themselves triumph over the democratic ideal. But when free men

shirk from their duties to society, as well as to themselves, they imperil their own liberty. When the citizens of a democracy allow themselves to be lulled into indifference, they seal their own doom. x x x If we are to remain free at all, we must show ourselves to be capable and willing to fight in defense of our way of life." [72]

Former Chief Justice Roberto Concepcion, who with IBP President Emeritus J. B. L. Reyes, has shunned their well-earned rest and in their eighties continue at the forefront of upholding the cause of freedom and human rights and rendering free legal aid to the poor, disadvantaged and oppressed, made this plea for the cause of the independence of the judiciary at the hall of the Court which he once presided with honor, dignity and integrity: "During the 85 years of this century, there has never been a case as transcendental as this one. We have tried and bolstered to be a democratic society which is based and predicated upon freedom of speech. But to bolster up the freedom of speech, we've established the right of every person accused and even detained to counsel. Now, any (act) tending to impair, the disposition of lawyers to represent the accused, is derogatory to the democratic system, and therefore, derogatory to human rights. It is significant that at first only, I would say, only persons suspected of being subversives were being arrested and later on salvaged. I don't know how the word salvage happened to be used, because salvage from what Then even the priests, x x x x x x x we have started from the North to the Southernmost part of the Philippines, from Abra to Davao, with lawyers. The only step higher than that echelon is the Judiciary. So it's not only the lawyers that are being involved in this case, it is the Judiciary, the independence of the Judiciary." [73]

His Holiness Pope John Paul II in his address of February 17, 1981 to the President and the Nation during his Philippine visit stressed that "Even in exceptional situations that may at times arise, one can never justify any violation of the fundamental dignity of the human person or of the basic rights that safeguard this dignity. Legitimate concern for the security of a nation, as demanded by the common good, could lead to the temptation of subjugating to the State the human being and his or her dignity and rights. Any apparent conflict between the exigencies of security and of the citizens' basic rights must be resolved according to the fundamental principle — upheld always by the Church — that social organization exists only for the service of man and for the protection of his dignity, and that it cannot claim to serve the common good when human rights are not safeguarded."

17. Petitioners' appeal for liberty should be heeded. — Petitioner Ilagan concisely stated at the May 23[rd] hearing that his objective as BAYAN's chairman is "To achieve reforms in the government by voicing our grievances." [74] In an open letter to his colleagues of the Integrated Bar, after expressing "grateful appreciation for the generous assistance, both financial and moral, which I and my family received (and) welcomed for reasons of necessity" (which hardliners would consider as a criminal act of the sympathizers and "assisting and aiding the enemy"), petitioner Ilagan makes this poignant appeal:

".... What we are here for may not be your concern, but due that we are here without due process of law should interest you all if you are true to your calling. We lawyers are adept at defending persons and interests in all the courts and forums of the land. We, particularly, should be the first concerned at defending our own. But, by all means, we deserve that sacred right to do so on legitimate, fair and equitable terms. Never mind that our families have to subsist on the meager earnings of our working wives, but foremost in our welfare is the right to be free, not only to prepare for our defense adequately but to give essence to that constitutional tenet that 'every person is presumed innocent until proven otherwise.' We cannot lay claim of a democratic society if we, lawyers, not only tolerate a lopsided view of the rule of law but ourselves fall prey to it.

"That we are 'preventively detained' is pure euphemism. Deprived of liberty and entirely curtailed in the exercise of our basic rights, we are, in every sense, prisoners of the state. It is in this context that I, on behalf of your three colleagues here, ask your wholehearted support in demanding justice for our cause." [75]

Petitioners' eminent counsel make this stirring plea on their behalf:

"Constitutional history in republican democratic states is the story of the progressive triumph and expansion of human liberty as against the assertion of unrestrained power by monarchs, tyrants and other instrumentalities in the political community. Civilization under law has been marked by the departure from lese majeste, the strengthening of legal institutions, especially the independent courts, and the adoption of rules, substantive and procedural, so that freedom is the general and normal state of the people. Although in exceptional cases, their individual freedom could be restrained but only on serious grounds compatible with the Constitution and always upon due process. This, at any rate, is a fundamental principle of English and American constitutional law whence our own constitutional system has been derived.

"In the words of Justice Jugo Black

".... From the popular hatred and abhorrence of illegal confinement, torture and extortion of confessions of violations of 'the law of the land' evolved the fundamental idea that no man's life, liberty or property be forfeited as criminal punishment for violation of that law until there had been a charge fairly made and fairly tried in public tribunal free of prejudice, passion, excitement and tyrannical power. Thus, as an assurance against ancient evils, our country, in order to preserve 'the blessings of liberty,' wrote into its basic law the requirement, among others, that the forfeiture of life, liberty or property of people accused of crime can only follow if procedural safeguards of due process have been obeyed.

"The determination to preserve the accused's right to procedural due process sprang in large part from knowledge of historical truth that the rights and liberties of the people accused of crime could not safely be entrusted to secret inquisitorial processes. *Chambers v. Florida*, 309 U. S. 227.

"In this jurisdiction, these rules are enshrined in the Bill of Rights in the Constitution and reenforced by statutes and the Rules of Court.

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"If a person is unlawfully deprived of his liberty, he can avail himself of the great writ of liberty, the privilege of the writ of habeas corpus for the purpose of regaining freedom in the shortest time possible.

"In its early years of practice, the privilege of the writ of habeas corpus was a puny and unavailing remedy as against the king. For judges were under the influence of the crown and refused to issue the writ for People who were detained on suspicion of disloyalty to the former but against whom there was no concrete evidence, and the people continued to languish in extended detention. To remedy this evil, the Habeas Corpus Act was adopted in 1679. *Ex Parte Watkins*, 7 L. Ed. 193, 201; *Ex Parte Yerger*, 8 Wall. 85; MAITLAND, THE CONSTITUTIONAL HISTORY OF ENGLAND 314-315.

"Since then, the privilege of the writ of habeas corpus has become the fundamental instrument against arbitrary and lawless state action.

"The suspension of the privilege of the writ of habeas corpus carries with it the derogation of the people's freedoms and liberties. Therefore, the provisions must be strictly construed and cannot be allowed to extend to situations not explicitly allowed by the Constitution.

"Obliquely and subliminally, respondents suggest to this Court to go back in history and to dismantle the intricate system of reenforcing rules, principles and procedures that have developed through centuries of struggle for the more efficacious protection of individual liberty. They seek a return to the lese majeste, when the voice of the King was the voice of God so that those who are touched by his absolute powers could only pray that the King acted prudently and wisely. Similarly, respondents would have this Court and the people accept the proposition that the State's designation of persons as rebels and subversives without more is adequate basis for their immediate and indefinite detention. And that regardless of the quality or absence of evidence, the courts are

powerless to intervene in behalf of the persons so designated.

"The Rule of Law and constitutionalism mean precisely the existence and the efficacy of legal institutions to protect and defend the rights and liberties of the people so they no longer have to depend upon prayers for the purpose.

"Petitioners invoke the power of this Court to uphold the Constitution and to protect the rights of the people and to reject the basically undemocratic proposition suggested by respondents." [76]

I submit that the Court should heed petitioners' appeal for liberty. An editorial after the Court's stillborn May 23[rd] Resolution graphically articulates the compelling reasons for granting their plea for liberty:

"The government is not only the Chief Executive and the Batasang Pambansa. It necessarily includes the Supreme Court and the other courts. And time and again it has been shown that the performance of the judiciary affects the complexion of the two other branches.

"The en banc resolution of the Supreme Court ordering the release from confinement of the three Davao lawyers who have acted as defense counsel in national security cases illustrates the point.

"The resolution shows the power of the judicial review and affirms the supremacy of the Constitution.

"It shows the independence of the judiciary and allays the fear of the opposition that the judiciary is an instrument of the Chief Executive.

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"Where the Constitution of the democracy is not supreme, the Supreme Court weakens as the Chief Executive becomes stronger. Where that situation obtains, the people no longer trust the courts nor the Constitution.

"In the democracies, the judiciary is usually the 'weakest' of the branches. But here and at this time, the exclusion of the judiciary from an analysis of the kind of government that obtains would make a big difference.

"A government without an independent Supreme Court would be like an automobile without brakes." [77]

I vote to grant the petition for habeas corpus and to set the petitioners immediately at liberty. Petitioners must be granted their constitutional right to due process and the right to preliminary investigation, as granted by statute and expressly assured to them by respondents in open court at the May 23[rd] hearing. The railroad ex-parte proceedings and orders in the instant rebellion case should be declared null and void for lack of jurisdiction in having deprived petitioners of their sacred constitutional right to due process.

[*] NOTE: This dissent was submitted on October 1, 1985, but its release with the majority opinion was delayed until the above date of promulgation. The opening line should now read: "Five (5) agonizing months after"

[1] As stated in the Resolution itself, "Aquino, J. dissented. Escolin, J. reserved his vote. Concepcion Jr. and Plana, JJ. (were) on leave."

[2] BONIFACIO's Motion for early resolution dated July 10, 1985.

[3] T.s.n. hearing of May 23, 1985, p. 8, et seq.

[4] Idem, at pp. 16-17.

[5] Idem, at pp. 17-19.

[6] Idem, at p. 16.

[7] Record, at pp. 6-8.

[8] VERITAS issue of May 26, 1985.

[9] Record, p. 6.

[10] Idem, pp. 7-8.

[11] Idem, p. 7.

[12] T.s.n., p. 85.

[12-a] Infra, pp. 35-36.

[13] Record, p. 37; emphasis supplied.

[14] T.s.n., p. 50.

[15] Idem, p. 74.

[16] Idem, p. 76; emphasis and notes in brackets supplied.

[17] T.s.n. of hearing, pp. 47-49; emphasis supplied.

[18] Idem, pp. 36-39; emphasis supplied.

[19] Idem, pp. 59-60; emphasis supplied.

[20] 121 SCRA 472 (1983).

[21] Presided by Executive Judge Pacita Cañizares Nye. This probably was one of the last official acts of the judge as such, for soon afterwards, under Administrative Order No. 3, series of 1985, dated June 13, 1985, based on her representations "of the continuing threats against her life" (not related to her action in the case), the then Chief Justice temporarily assigned her to preside over Branch 92 of the Regional Trial Court of Quezon City. On July 19, 1985, she received a permanent appointment to said court.

[22] Record, pp. 200-201; emphasis supplied.

[23] G.R. Nos. 71208-09 decided jointly with *People vs. Sandiganbayan*, G.R. Nos. 71212-13 on August 30, 1985.

[24] Art. IV, Bill of Rights, sections 1 and 17, Phil. Constitution.

[25] *PBM Employees Organization vs. PBM Co., Inc.*, 51 SCRA 189, 211, per Makasiar, J. (June 5, 1973); note in brackets supplied.

[26] Art. IV, sec. 3, Phil. Constitution.

[27] *People vs. Monton*, 23 SCRA 1024; *San Diego vs. Hernandez*, 24 SCRA 110; *Luna vs. Plaza*, 26 SCRA 311; *People vs. Oandasan*, 25 SCRA 277; *People vs. Abejuela and Endan*, 38 SCRA 324; *People vs. Paras*, 56 SCRA 248; *Banzon vs. Cabato, etc.*, 64 SCRA 419; *Tabil vs. Ong*, 91 SCRA 451; and *Mariñas vs. Siochi*, 104 SCRA 423.

[28] *Guingona vs. City Fiscal of Manila*, 128 SCRA 577, 589, per Makasiar, J., citing *Primicias vs. Mun. of Urdaneta, Pangasinan*, 93 SCRA 462; citing *Ramos vs. Torres*, 25 SCRA 557; and *Hernandez vs. Albano*, 19 SCRA 95; *Lopez vs. City Judge*, 18 SCRA 616; *Yu Kong Eng vs. Trinidad*, 47 Phil. 385; and *Dimayuga vs.*

Fajardo, 43 Phil. 304.

[29] See fn. 23. The citations have been omitted.

[29-a] Ermita-Malate Hotel & Hotel Operators Ass'n. vs. City Mayor, 20 SCRA 849, 860-861.

[30] Emphasis supplied.

[31] Record, pp. 160-165.

[32] 18 SCRA 1168, 1171.

[33] At p. 11.

[34] Record, pp. 228-229.

[35] At pages 4-7 hereof.

[36] T.s.n., p. 89.

[37] 125 SCRA 553 (1983).

[38] Citing Primicias vs. Fugoso, 80 Phil. 71, and U.S. vs. Apurado, 7 Phil. 422 (1907).

[39] Metro Manila Times issue of Aug. 30, 1985.

[40] Record, p. 222.

[41] Idem.

[42] Supra, footnote 25, penned by then Associate (now Chief) Justice Felix V. Makasiar.

[43] Emphasis supplied.

[43-a] T.s.n., pp. 70-74.

[43-b] See pars. 3 and 4 hereof, at pp. 18-20.

[43-c] See pars. 7 to 10 hereof, at pp. 22 to 30.

[44] American Com. vs. Douds, 339 U.S. 382, 421.

[45] Justice Cardozo, Nature of Judicial Process, 90-93; Tañada and Fernando, Constitution of the Phil., 1952 ed., 71.

[46] West Virginia State Board of Education vs. Barnette, 319 U.S. 624, 638.

[47] Laski, The State in Theory and Practice, 35-36.

[48] See Chafee on Freedom of Speech and Press, 1955, pp. 13-14.

[49] Justice Douglas, A Living Bill of Rights (1961), p. 64, cited by Justice Castro in Chavez v. Court of Appeals, 24 SCRA 663, 692.

[50] Marsh vs. Alabama, 326 U.S. 501, 509; Tucker vs. Texas, 326 U.S. 517, 519-520.

[51] NACCP vs. Button (Jan. 14, 1963), 371 U.S. 415, 433, 9 L. Ed. 2nd 405, 418.

[52] Terminiello vs. Chicago, 337 U.S. 1.

[53] *Thomas vs. Collins* (1945), 323 U.S., 516, 530, cited by Mr. Justice Castro in his concurring opinion in *Gonzales vs. Comelec*, April 18, 1969, 27 SCRA 835, 895.

[54] Emphasis supplied.

[55] 134 SCRA 438 [Feb. 18, 1985], per Gutierrez, Jr., J. Aquino, De la Fuente and Alampay, JJ. took no part.

[56] Metropolitan newspaper issues of June 20 to June 22, 1985.

[57] Metro-Manila Times issue of September 24, 1985. See also metropolitan newspaper issues of September 23, 1985, et seq.

[58] G.R. No. 67766 decided jointly with G.R. No. 70881 *Valmonte vs. Integrated National Police* on August 14, 1985.

[59] Art. IV, sec. 3, Phil. Constitution; *supra*, p. 16.

[60] *Bulletin Today* issue of June 14, 1984.

[61] *Record*, pp. 222-223.

[62] *Veritas* issue of June 30, 1985; emphasis supplied.

[63] *Veritas* issue of May 26, 1985.

[64] At page 7 hereof.

[65] Former Senior Justice (now Chief Justice) of the Supreme Court of India, P. N. Bhagwati's 1982 address at IBA 19th Biennial Conference in New Delhi: *The Challenge by the Judiciary*.

[65-a] "x x x judicial decisions assume the same authority as the statute itself and, until authoritatively abandoned, necessarily become, to the extent that they are applicable, the criteria which must control the actuations not only of those called upon to abide thereby but also of those in duty bound to enforce obedience thereto." *Caltex (Phil.) Inc. vs. Palomar*, 18 SCRA 247, 257, per Fred Ruiz Castro, J; emphasis supplied.

[66] 63 Phil. 134 (1936).

[67] *Olmstead vs. U.S.* 277 U.S. 438, dissenting opinion of Brandeis, J.

[68] The texts thereof are quoted in full on page 6 of the majority decision.

[69] 135 SCRA 514 (March 27 1985).

[70] At page 7, wherein the writer was the ponente, as therein stated.

[71] Resolution in G.R. No. 59329, prom. July 19, 1985, per Gutierrez, Jr., J.

[72] *Phil. Daily Express* issue of May 28, 1985.

[73] T.s.n. , pp. 90-91.

[74] *Idem*, p. 68.

[75] *Malaya* issue of Sept. 24, 1985; emphasis supplied.

[76] *Petitioners' Consolidated Comment and Traverse*, pp. 1-5; emphasis supplied.

[77] *Bulletin Today* issue of May 25, 1985.

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